

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAYMOND WAYNE MAGEE,

Petitioner,

v.

Case No. 1:05-CV-707

THOMAS PHILLIPS,

HON. GORDON J. QUIST

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it Petitioner's Objections to the January 25, 2006, report and recommendation issued by Magistrate Judge Brenneman recommending that Petitioner's petition for writ of habeas corpus be denied as barred by the one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 ("AEDPA"). In his report and recommendation, the magistrate judge found that the one-year period began to run on October 25, 1999, and expired one year from that date. The magistrate judge concluded that Petitioner's petition was barred by the limitations period under the AEDPA because it was not filed until on or about October 14, 2005, several years after the one-year period expired. The magistrate judge also concluded that Petitioner is not entitled to equitable tolling of the statute of limitations, noting that Petitioner could have readily discovered the facts upon which he bases his claim that M.C.L. § 750.520 is unconstitutional under the Michigan Constitution in 1997, when Petitioner was sentenced and began his appeal process.

Petitioner devotes the majority of his objection to arguments regarding subject matter jurisdiction. He fails to point to any legally sufficient basis supporting the application of equitable tolling in this case. Moreover, he does not argue that the magistrate judge's conclusion that he filed his Petition after the one-year limitations period expired was erroneous. Petitioner also discusses the merits of his claim, but his discussion is irrelevant to the statute of limitations and the applicability of equitable tolling. Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued January 25, 2006 (docket no. 8) is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus is **DENIED** because it is barred by the one-year statute of limitations.

March 8, 2006

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE